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*Attorneys for Robert Van Orden* DEPUTY CLERK

8 MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

9 ROBERT VAN ORDEN,

10 Plaintiff,

11 vs.

12 BENEFIS HEALTHCARE,

13 Defendant.  
14  
15  
16  
17

Cause No. **CDV-11-0218**

Judge **KENNETH R. NEILL**

**CV-11-26-GF-SEN**

**COMPLAINT**

**CLASS ACTION**

**REQUEST FOR JURY TRIAL**

18 COMES NOW Plaintiff, by and through his counsel of record, and for his Complaint  
19 against Defendant Benefis Healthcare ("Benefis"), alleges as follows:

20 **SUMMARY OF CASE**

21 1. Benefis is required by contract and federal law to charge Tricare for services  
22 given to Tricare insureds and to accept the payment from Tricare at Tricare's reduced  
23 reimbursement rates. Some of Benefis's patients who are insured under Tricare and who  
24 have suffered injuries due to the fault of third parties also have claims under policies which  
25 provide coverage for payment of their damages, including medical expenses, such as third  
26 party liability policies and first party UM and UIM provisions. Benefis has engaged in an  
27 unlawful course of conduct whereby it has systematically sought to obtain the largest  
28

possible payment for itself by either:

1. Refusing to bill Tricare for covered services and seeking payment at higher rates from these other insurance sources; or
2. Billing Tricare and collecting Tricare payments; then identifying, seeking and obtaining larger payments from these other insurance sources; and then returning the Tricare payments to Tricare.

These actions violate federal and state law, deprive the Tricare beneficiaries of the benefit of their contract and coverage, and wrongfully divert desperately needed insurance proceeds from injured people to Benefis, reducing its patients' insurance recoveries and preventing them from being made whole.

#### **PARTIES**

2. Robert Van Orden is a resident and citizen of Great Falls, Cascade County, Montana.

3. Benefis Healthcare is a Montana not-for-profit corporation with its principle place of business in Great Falls, Montana.

#### **JURISDICTION**

4. This Court has original jurisdiction over plaintiff's claim and the putative class action pursuant to Article VII, Section 4, Montana Constitution, and Rule 23, M.R.Civ.P.

5. Personal jurisdiction is proper over defendant, who is a Montana corporation and conducts business in the State of Montana.

6. Venue is proper in Cascade County because plaintiff is a resident of Cascade County, Defendant's principal place of business is in Cascade County, and all the pertinent facts as to plaintiff's claim and the claims of the putative class took place in Cascade County.

FACTS

**A. The Relationship Between Benefis and Tricare.**

7. Tricare is a federal health care program which replaces primary health care coverage for its beneficiaries, who are military service members and their family members.

8. Benefis is a hospital in Great Falls, Montana.

9. Upon information and belief, before May, 2009, Benefis was a participating provider with Tricare.

10. In May, 2009, Benefis became a network provider with Tricare and signed an agreement with the Regional Tricare Contractor to provide care to Tricare beneficiaries at a negotiated rate.

11. Network and participating providers are required to obtain payment from Tricare for medical services provided to Tricare members.

12. Network and participating providers are forbidden from seeking or obtaining payment from Tricare members for medical services provided to Tricare members.

13. The statutory and regulatory scheme which governs Tricare does not provide a basis for allowing a civilian healthcare provider such as Benefis to collect its treatment costs from a third party tortfeasor or its insurer or a beneficiary's UM or UIM insurer, either before or after submitting claims for payment to Tricare.

14. It is the federal government which has the right of collection against such a tortfeasor or its insurer. 42 U.S.C. 2651-2653.

**B. Robert Van Orden's Circumstances.**

15. Robert Van Orden is married to a member of the United States Air Force stationed at Malmstrom Air Force Base in Cascade County, Montana.

16. Robert Van Orden is a Tricare beneficiary.

1       17. Robert Van Orden was seriously injured on October 26, 2009, in Great Falls,  
2 Montana, when his vehicle was struck by a vehicle driven by James Webb.

3       18. Webb was insured by Unitrin, with bodily injury liability limits of \$25,000.

4       19. Robert Van Orden received medical care from Benefis in October, 2009, and  
5 May, 2010, for his injuries suffered in the automobile accident.

6       20. Benefis never submitted a claim to Tricare for the medical expenses incurred  
7 in October, 2009, which totaled \$569.81.

8       21. Benefis submitted a claim to Tricare for the medical expenses incurred in  
9 May, 2010, totaling \$14,038.90.

10       22. Tricare issued payment to Benefis on July 19, 2010, for the May, 2010,  
11 medical expenses in the amount of \$3,324.33, which is the rate it negotiated with Benefis.

12       23. Benefis accepted the Tricare payment.

13       24. After accepting the Tricare payment, Benefis filed a medical lien in the  
14 amount of \$14,608.71, representing the total of the October 2009, and May, 2010,  
15 treatment expenses before reduction by Tricare, and sent a copy of that lien to Unitrin on  
16 August 31, 2010.

17       25. Tricare sent a letter to Unitrin on September 13, 2010 asserting its  
18 independent right of recovery against Unitrin for the amount of the payment it made to  
19 Benefis.

20       26. Even though liability was reasonably clear and Van Orden's damages clearly  
21 exceeded the available insurance coverage, Unitrin did not pay the bodily injury policy  
22 limits to Van Orden because of the Benefis lien.

23       27. Benefis advised Van Orden that it was seeking to collect the full amount of its  
24 bill from Unitrin and that if it did so, it would return Tricare's payment to Tricare.

25       28. Benefis was aware that Van Orden's injuries were serious and that the  
26  
27  
28

1 insurance available from Unitrin and Van Orden's own underinsured motorist coverage  
2 would be insufficient to make him whole.

3 **C. Benefis Practice and Policy Violates Federal Law.**

4 29. Based upon information provided by Tricare personnel and admissions made  
5 by Benefis personnel, Benefis has adopted a practice of billing third party tortfeasor's  
6 liability insurance and Tricare beneficiaries' UM and UIM insurance for medical services  
7 provided to Tricare beneficiaries.  
8

9 30. In pursuit of this policy, Benefis has failed and refused to submit covered  
10 claims to Tricare and instead sought reimbursement at higher rates from such other  
11 insurers.

12 31. In pursuit of this policy, Benefis has filed covered claims with Tricare,  
13 accepted payment from Tricare at the lower rate, and then sought and received recovery  
14 for its services at the original rate from tortfeasor's insurers and its patients' own UM and  
15 UIM insurers, and then returned the Tricare payments to Tricare.  
16

17 32. Based upon information provided by Tricare personnel and admissions made  
18 by Benefis personnel, this policy has been applied to the medical services expenses of many  
19 Tricare beneficiaries.

20 33. Benefis's application of this policy violates federal and state law, has deprived  
21 Tricare beneficiaries of desperately needed insurance coverage recoveries from third party  
22 insurers and their own insurers and has deprived Tricare beneficiaries of their Tricare  
23 benefits and the benefits of being Tricare beneficiaries.  
24

25 **COUNT I: DECLARATORY JUDGMENT**

26 **(Asserted on behalf of Plaintiff and the Putative Class)**

27 34. Plaintiff brings this action pursuant to 27-8-101 et seq., M.C.A. and Rule 57,  
28 M.R.Civ.P., on his own behalf and on behalf of all others similarly situated, as interested

1 persons who are Tricare beneficiaries who have received medical treatment from Benefis.

2 35. An actual controversy exists as to the right of Plaintiff and all others similarly  
3 situated to receive the benefits of the Tricare program and other available insurance and  
4 Benefis's policy of ignoring such rights and filing medical liens under Montana's medical  
5 lien statute and wrongfully seizing other insurance proceeds which would be applied to  
6 compensate Plaintiff and others similarly situated to make them whole or reduce the  
7 amount of their loss.  
8

9 36. Plaintiff seeks a declaration pursuant to 27-8-202, M.C.A., that Benefis has  
10 programmatically breached its duties under state and federal law by:

11 (1) refusing to submit covered claims to Tricare so that it could obtain payment  
12 at a higher rate from other insurance sources in claims involving tort liability;

13 (2) submitting claims, receiving payment from Tricare, and then filing liens and  
14 seeking and obtaining payment at a higher rate from other sources in claims involving tort  
15 liability, to the detriment of Tricare beneficiaries; and  
16

17 (3) filing unauthorized and wrongful liens.

18 37. Plaintiff seeks supplemental relief pursuant to 27-8-313, M.C.A., in the form  
19 of damages, including punitive damages, suffered as a result of Benefis's violations of state  
20 federal law and improper handling of billing of medical services rendered to Tricare  
21 beneficiaries.  
22

23 38. Plaintiff seeks supplemental relief pursuant to 27-8-313, M.C.A., in the form  
24 of specific relief requiring Benefis to return all payments obtained from liability and UM  
25 and UIM insurers in cases involving tort liability to the Tricare beneficiaries, and that  
26 Benefis be required to submit or resubmit all such claims to Tricare for payment.

27 39. Plaintiff seeks supplemental relief pursuant to 27-8-313, M.C.A., in the form  
28 of injunctive relief forbidding Benefis from engaging in such billing practices and lien filing

1 in the future in violation of state and federal statutes and the rights of Tricare beneficiaries.

2 40. Plaintiff seeks supplemental relief pursuant to 27-8-313, M.C.A., in the form  
3 of attorney fees incurred in prosecuting this action.

4 41. The supplemental relief sought in this action is necessary and proper under  
5 the circumstances of this case.

6  
7 **COUNT II: BREACH OF CONTRACT**

8 **(Asserted on behalf of Plaintiff and the Putative Class)**

9 42. Plaintiff and all others similarly situated are Tricare beneficiaries who have  
10 received medical treatment from Benefis and are third party beneficiaries of Benefis's  
11 contract with Tricare's regional contractor.

12 43. Plaintiff and those similarly situated have a property interest in their cause of  
13 action against third parties and in insurance proceeds available from liability, UM, and  
14 UIM policies to pay damages awarded under that cause of action.

15 44. When Benefis collects payment from such insurers rather than from Tricare,  
16 Benefis is seeking and obtaining payment from Tricare insureds, in violation of its contract  
17 with the Tricare regional contractor. When Benefis collects such funds, it is depriving the  
18 Tricare beneficiaries of those monies, which would otherwise be paid to such injured  
19 individuals to compensate them for the injuries and damages suffered with respect to the  
20 tort claim.

21 45. Benefis, through the wrongful lien filing and other collection acts alleged  
22 above, has breached other provisions of its contract with the Tricare regional contractor.

23 46. Plaintiff and all others similarly situated have suffered damages as a result of  
24 the breaches of contract, including loss of the third party insurance proceeds, interest on  
25 such proceeds during the period of deprivation, and other damages.  
26  
27  
28

**COUNT III: CONVERSION**

**(Asserted on behalf of Plaintiff and the Putative Class)**

47. By filing medical liens and wrongfully seeking and obtaining payment from insurers in tort claims of medical expenses incurred by Tricare beneficiaries, Benefis has converted to its own use funds belonging to plaintiff and all others similarly situated.

48. Plaintiff and all others similarly situated have been damaged by this conversion, in the amount of the wrongfully paid funds and interest thereon from the date of the wrongful payment, and in other ways.

49. Benefis acted with actual malice, as defined by 27-1-221(2), M.C.A., and abuse under 32 C.F.R. 199.9(b) in converting the funds of plaintiff and those similarly situated, who accordingly are entitled to recover punitive damages.

**COUNT IV: WRONGFUL LIEN**

**(Asserted on behalf of Plaintiff and the Putative Class)**

50. As set forth in the preceding paragraphs, the medical lien filed and served by Benefis against Unitrin is wrongful and invalid, as are any medical liens that have been filed with respect to other individuals similarly situated.

51. Plaintiff and those similarly situated have suffered damages and continue to suffer damages as a result of the wrongful liens.

52. Plaintiff and those similarly situated are entitled to an Order setting aside the wrongful liens and issuing an award of damages to Plaintiff and affected class members.

**COUNT V: TORTIOUS INTERFERENCE WITH CONTRACT**

**(Asserted on behalf of Plaintiff and the Putative Class)**

53. Plaintiff and all others similarly situated are third party beneficiaries of liability insurance contracts issued to the tortfeasors who harmed them and/or parties to

1 contracts with an insurer providing UM and/or UIM coverages.

2 54. By demanding and obtaining subrogation from the insurers issuing such  
3 insurance contracts, Benefis has interfered in those contracts and prevented plaintiff and  
4 all others similarly situated from recovering benefits due under those contracts.

5 55. Such interference was tortious and unjustified.

6 56. As a result of such tortious interference with contract, plaintiff and all others  
7 similarly situated have been damaged, in the amount of the wrongfully diverted funds and  
8 interest thereon from the date of the interference and in other ways.  
9

10 57. Benefis acted with actual malice, as defined by 27-1-221(2), M.C.A., and  
11 abuse under 32 C.F.R. 199.9(b) in converting the funds of plaintiff and those similarly  
12 situated, who accordingly are entitled to recover punitive damages.

13 **CLASS ACTION ALLEGATIONS**

14 58. Plaintiff brings this action on his own behalf and on behalf of all others  
15 similarly situated pursuant to Rule 23, M.R.Civ.P. Plaintiff seeks certification of a class  
16 under Rule 23, M.R.Civ.P.  
17

18 59. Class definition: The class is composed of all persons who

- 19 1. are Tricare beneficiaries;
- 20 2. were injured in an accident giving rise to a tort claim;
- 21 3. received medical treatment from Benefis, and with respect to such  
22 treatment, Benefis, within the last eight years:
- 23 a. refused to submit covered claims to Tricare so that it could obtain  
24 payment at a higher rate from other insurance sources; and/or
- 25 b. submitted claims, received payment from Tricare, filed a lien and  
26 sought payment at a higher rate from other sources to the detriment of  
27 Tricare beneficiaries; and/or  
28

1 c. filed an unauthorized and wrongful lien;

2 60. Numerosity: The class is comprised of multiple persons and is so  
3 numerous that joinder of all members is impracticable, as required by Rule 23(a)(1),  
4 M.R.Civ.P.

5 61. Commonality: There are questions of law and fact common to the class,  
6 as required by Rule 23(a)(2), M.R.Civ.P. These questions of law and fact include, without  
7 limitation, the following:  
8

9 (a) whether the proposed class of Tricare beneficiaries is entitled to relief for  
10 Benefis's programmatic taking of third-party tort claim insurance before and/or after  
11 submitting claims to Tricare;

12 (b) whether Benefis violated Montana's lien statutes and federal law by filing  
13 liens against tort claim insurance funds in which Tricare beneficiaries had a property  
14 interest;  
15

16 (c) whether Benefis violated 42 U.S.C. 2652(c) and Montana's made whole  
17 doctrine;

18 (d) whether Benefis has a duty to return to these beneficiaries tort claim  
19 insurance recoveries wrongfully taken.

20 (e) whether Benefis's actions breached their contract with the Tricare regional  
21 contractor;

22 (f) whether defendants' acts constituted a conversion;

23 (g) whether defendants' wrongful subrogation constituted a tortious interference  
24 in insurance contracts;  
25

26 (h) whether the class is entitled to compensatory relief;

27 (i) whether the class is entitled to declaratory relief;

28 (j) whether the class is entitled to injunctive relief;

1 (k) whether the class is entitled to punitive damages; and

2 (l) whether the class is entitled to attorney fees and costs.

3 62. Typicality: The claims of Plaintiff as the representative party are typical of  
4 the claims of the class as required by Rule 23(a)(3), M.R.Civ.P.

5 63. Adequacy: Plaintiff will fairly and adequately represent and protect the  
6 interests of the class, as required by Rule 23(a)(4), M.R.Civ.P. He is similarly situated with  
7 members of the class and his interests align with the interest of the class members he seeks  
8 to represent. Plaintiff's counsel are competent and have experience in class action  
9 litigation.  
10

11 64. Appropriateness of Declaratory and Injunctive Relief: Benefis has  
12 refused to act as required by Montana and United States law with respect to the billing  
13 practices relating to certain Tricare covered claims and its refusal is on grounds generally  
14 applicable to the class, thereby making appropriate final injunctive relief and  
15 corresponding declaratory relief with respect to the class as a whole, as required by Rule  
16 23(b)(2), M.R.Civ.P.  
17

18 65. Predominance: Common questions of fact and law predominate over  
19 individualized issues as required by Rule 23(b)(3), M.R.Civ.P. The facts surrounding  
20 defendants' third party billing and lien practices predominate because this case centers on  
21 such conduct. The class claims seek injunctive relief compelling the return of all  
22 wrongfully received third party insurance amounts, and compliance with federal and state  
23 law.  
24

25 66. A class action is superior to other available methods for the fair and efficient  
26 adjudication of the controversy, since resolution will correct injustices faced by all such  
27 Tricare beneficiaries and compel future compliance with law. The common issues make a  
28 class action the most efficient method for resolution of these claims.

**PRAYER FOR RELIEF**

Wherefore Plaintiff, on behalf of himself and the putative class, prays that judgment be entered against Benefis for all the damages to which they are entitled under law as follows:

a. Declaratory Judgment that Benefis has programmatically breached its duties under state and federal law by:

(1) refusing to submit covered claims to Tricare so that it could obtain payment at a higher rate from other insurance sources in claims involving tort liability;

(2) submitting claims, receiving payment from Tricare, and then filing liens and seeking and obtaining payment at a higher rate from other sources in claims involving tort liability, to the detriment of Tricare beneficiaries; and

(3) filing unauthorized and wrongful liens.

b. Injunctive relief requiring Benefis to return all wrongfully obtained tort claim insurance proceeds to the class members, with interest thereon from the date of claiming and to submit or resubmit such claims for Tricare payment;

c. Injunctive relief prohibiting Benefis from engaging in such billing practices and lien filing in the future in violation of state and federal statutes and the rights of Tricare beneficiaries.

d. The setting aside of the wrongful medical liens;

e. Actual damages on all counts;

f. Punitive damages;

g. Costs and attorney fees; and

h. Such other and further relief as the Court may deem just and proper.


**DEMAND FOR JURY TRIAL**

Plaintiff demands trial by jury of all the issues in this action.

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3  
4 DATED this 7th day of March, 2011.

5 LANNING, HARRIS & CONKLIN, P.C.

6  
7 By

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